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"SLANDER OF GOODS" IN ENGLAND AND GERMANY .. p. 607

The Solicitors' Journal

[ESTABLISHED 1857.] [REGISTERED AS A NEWSPAPER.]

VOL. LXXVIII. No. 35 [PAGES 605 TO 620]. Saturday, September 1, 1934. PUBLISHED WEEKLY. PRICE ONE SHILLING.

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The Solicitors' Journal

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Current Topics.

Judicial Patronage.

THE vacancy in the Court of Appeal caused by the death of Lord Justice SCRUTTON will entail the appointment of a successor to complete the constitution of the appellate tribunal, and it will be no easy task to find one possessing the force, learning and experience of him whose loss we all deplore. Such an appointment, as also those to the highest positions in the law, are within the province, not of the Lord Chancellor, but of the Prime Minister for the time being. In the biography of the late Lord CAVE, by Sir CHARLES MALLET, this is brought out in letters, couched in the most friendly terms, passing between Mr. BALDWIN, the then Prime Minister, and Lord CAVE who was at that time the Lord Chancellor. The occasion of the correspondence was the necessity of filling three vacant posts in the courts—a Lord of Appeal, the Master of the Rolls, and a Lord Justice, these three being filled respectively by the appointment of Lord Justice YOUNGER as a Lord of Appeal, Sir ERNEST POLLOCK as Master of the Rolls, and Mr. Justice SARGANT as a Lord Justice. All three appointments fell to be made by Mr. BALDWIN, but the Prime Minister, with that courtesy for which he is noted, wrote as follows to Lord CAVE: "I should not like to make a legal appointment that had not your concurrence. Perhaps you would wire me as soon as you conveniently can, if you approve, and I will forthwith communicate with them. But if you are in any way not satisfied, write. If you agree, it will remain for you to appoint one Chancery judge." That Mr. BALDWIN took a keen interest in legal appointments comes out also in a later letter to Lord CAVE in which he said: "Though it is not my business, I should be grateful if you would tell me what is in your mind as to promotions to the Bench before you finally make the offers. Could we have a chat next week, and then we could go over any higher promotions that may be coming along." With a Prime Minister and Lord Chancellor working so harmoniously as Mr. BALDWIN and Lord CAVE did, it was not surprising that excellent appointments were made.

County Court Jurisdiction again.

ONE of the most urgent problems for the legal reformer nowadays is that of lowering the frequently prohibitive cost of litigation. The Second Interim Report of the Business of the Courts Committee had the concrete result to its credit of the passing of the Administration of Justice (Appeals) Bill on 25th July. But in other respects it received diverse criticisms from the General Council of the Bar, the Legal Procedure Committee of The Law Society, and the Parliamentary and Commercial Law Committee of the London Chamber of Commerce, and it became almost as notable for the suggestions of which it disapproved as for those it put forward. A *cri de coeur* on the subject of decentralisation of the courts, one of the controversial topics dealt with in the Report, is contained in a letter to *The Times* of 23rd August from Mr. W. S. MITCALFE, in which the writer emphasises the recently published proposals of the Newcastle-upon-Tyne Law Society, and of the Associated Provincial Law Societies. The proposal of the Newcastle Society was that the country should be divided into several provincial districts, each with its complement of judges having the status of High Court judges with exclusive jurisdiction in the first instance over proceedings within their districts. One can appreciate the attractiveness of the proposal to lawyers in cities distant from London where, admittedly, the additional expense of trying commercial cases in London is high, but it must be remembered that one of the virtues of the circuit system is that judges are kept in touch with one another, an advantage which would be absent from the system recommended by the Newcastle-upon-Tyne Law Society. The Associated Provincial Law Societies, on the other hand, recommend, *inter alia*, that a substantial increase be made in the jurisdiction of county court judges, with a compensating increase for their registrars. The London Chamber of Commerce was unfavourable to this suggestion on the ground that the cheapening of litigation in such cases would not be great. The effect, however, of taking provincial cases away from London will result in an inevitable cheapening as to witnesses' costs, which are quite substantial. Some proposals on the extension of county court jurisdiction were put forward in an article on this subject in a previous issue (78 SOL. J. 144). There is undoubtedly a real grievance felt in the provinces, more particularly owing to the difficulties and delays attending the trial of involved commercial cases on circuit, and further consideration should be given to this important matter.

The Oldest Inn of Chancery.

WITHIN a stone's throw of Fleet-street with its busy hum of traffic is a quiet little byway forming what is left of Clifford's Inn, the oldest Inn of Chancery. Originally the town house of the Clifford family, ancestors of the Earls of Cumberland, it was granted to Robert Clifford by Edward III in 1310. On his death, it passed to Robert, his brother, whose widow, Isabel, let it to students of law in 1344. It thus became one of the earliest law schools. It housed about 100 students, but the numbers rapidly declined in the seventeenth century. The Society of the Inn seemed to have purchased the freehold in 1618 from Francis, Fourth Earl of Cumberland, for £600 and a rent-charge of £4 per annum, which was redeemed in 1880. Among the students may be noted Sir EDWARD COKE and JOHN SELDEN. WILLIAM WYLDE entered the Inn in 1627 and became Recorder of London in 1659 and represented the City in Parliament in the next year. ROBERT HEATH, who became Recorder in 1618, had also been a student in the Inn. The Great Fire of London was stopped at Fetter-lane and

the Hall of Clifford's Inn was left untouched. Here the Court of Judicature set up by the statute of 18 & 19 Charles II, c. 7, held its sittings to hear and determine all differences between the landlords as to boundaries and between landlords and tenants in relation to the liability to rebuild. The judgments, engrossed on parchment and signed by the judges, are contained in nine large volumes entitled "Fire Decrees," 1666-1676, preserved in the Records Office, Guildhall. In recent years it tended to lose its legal associations, although it is referred to by DICKENS in his graphic and memorable chapter on the Inns in Chancery in the immortal "Pickwick Papers." The last member of the Inn was enrolled in 1877 and the last Principal elected in 1890. In 1902, upon the dissolution of the Society, there were sixteen members. The Court of Appeal decided that the members did not hold the property for their own personal benefit but subject to a trust for charitable purposes. It was sold in 1903 for £100,000; the interest on the sum is devoted to legal education. The whole property was again sold in 1927, and it has recently been again sold to a property company for the purposes of a building site. The arms of the Clifford family still appear above the gateway which may be part of the fourteenth century building. The hall, though escaping the Great Fire, was rebuilt in 1767—although part of the earlier walls are incorporated—and in the east wall there is a late fourteenth century doorway. Various efforts have been made to save this, the oldest Inn of Chancery, with its ancient history and traditions, but so far they have been unavailing. The Office of Works, to whom application was recently made for its preservation under the Ancient Monuments Acts, declined to take action as they did not think that any of the existing buildings were worthy of preservation. The City Corporation also within whose boundaries the Inn is situate have also been considering the problem, but it seems doubtful if they have any power to act. It looks probable, therefore, that this old legal link with the past will go the way of Furnival Inn, Barnard's Inn and others of the old resorts and homes of the law. It is to be hoped, however, that it may be possible to preserve some of the interesting features of Clifford's Inn, such as the old gateway with the Clifford Arms still shown there, and also that some portion at least of the old gardens may be left to remind us of EDWARD COKE, JOHN SELDEN and other great lawyers of the past who walked and talked there.

The New Arbitration Act as affecting Agricultural Arbitrations.

THE Arbitration Act, 1934 (dealt with generally in an article, 78 SOL. J. 480), contains some references to the Agricultural Holdings Act, 1923, the effect of which would seem to require some explanation. Section 16 (5) of that statute says that, *inter alia* :—

> "The Arbitration Act, 1889, shall not apply to any arbitration under this Act."

That still holds good—not having been repealed—and the reference to "statutory arbitrations" in s. 20 of the newly passed Arbitration Act (by which the former Act of 1889 is amended) confirms the exclusion of agricultural arbitrations from its operation by the terms of its proviso. Section 20, after setting out that this Act shall apply (subject to certain exceptions embodied in the Second Schedule) in relation to *every arbitration under any other Act passed before or after* "as if the arbitration were pursuant to an arbitration agreement and as if that other Act were an arbitration agreement . . . " continues thus :—

> "Provided that this Act shall not apply to any arbitration to which the principal Act (i.e., the Act of 1889) does not apply and no provision of this Act, which expressly amends a provision of the principal Act, shall apply to any arbitration to which that provision of the principal Act does not apply."

All of which, put into perfectly simple language, means that the Arbitration Acts, 1889 and 1934, do not apply to arbitrations under the Agricultural Holdings Act, 1923, any more than they did apply before.

But—and it is an important "but"—by s. 18 it is provided that two new sub-sections are to be inserted in s. 16 of the Agricultural Holdings Act, 1923, after sub-s. (5), to wit :—

> "(5A) Sections 110, 111 and 112 of the County Courts Act, 1888 (which provide for the issue of summonses to witnesses in county court actions and the enforcement of such summonses and the bringing up of prisoners to give evidence in such actions), shall apply to any arbitration under this Act as if that arbitration was an action or matter in the county court."
>
> "(5B) The High Court may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before any arbitrator appointed under this Act if the prisoner is confined in any prison under process in any civil action or matter."

That would appear to be the full extent to which agriculture is concerned with the new Arbitration Act affecting arbitrations generally. What effect it will have in operation, we think, remains to be seen. Certainly it will give arbitrators in agricultural disputes an important power in regard to compelling the attendance of unwilling witnesses.

Income Tax: "Tied" Houses.

THE recent case of *Alfred Leney & Co. Ltd.* v. *Whelan* (*Inspector of Taxes*), 78 SOL. J. 586, provides a further illustration of the application of the principle established in *Fry* v. *Salisbury House Estates* [1930] A.C. 432, that an assessment for income tax purposes under Sched. A is exhaustive and precludes a further assessment under Sched. D. As Lord MACNAGHTEN said in *London County Council* v. *Attorney-General* [1901] A.C. 26 : "In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on 'profits or gains' in the case of duties chargeable under Sched. A, and everything coming under that schedule —the annual value of lands capable of actual occupation as well as the earnings of railway companies and other concerns connected with land—just as much as it is in the case of other schedules of charge." The recent case related to a number of tied houses owned by a company which had once carried on a brewery business. In 1926 it ceased its brewing activities and leased all its properties to another company. The tenants made deductions under Sched. A, No. VIII, r. 1, of the Income Tax Act, 1918, in respect of tax assessment in paying their rents to the last-named company, which itself made similar deductions to the lessor company. The assessments amounted to about £5,500; the rents payable to about £20,000. The Court of Appeal, reversing a decision of FINLAY, J., held that, after payment under Sched. A, an assessment could not be made under Sched. D in respect of the difference between the sums aforementioned. The schedules were mutually exclusive. The two cases following were referred to by Lord HANWORTH, M.R., as indicative of the valuation of public-houses for Sched. A purposes. In *Bradford-on-Avon Assessment Committee* v. *White* [1898] 2 Q.B. 630, CHANNELL, J., said that in estimating the rateable value of licensed premises he did not think it would be right to say that the competition of brewers should be wholly excluded from consideration, but the special prices which they might give, owing to personal considerations, and not on account of the value of the premises, should be excluded, except so far as the possibility of such special prices being obtained raised the market value generally. In *Rex* v. *Shoreditch Assessment Committee* [1910] A.C. 859, FARWELL, L.J., pointed out that a "tie" was disregarded because the question was not what rent a particular individual would give, but what would a hypothetical tenant give and "the hypothesis deals with the ordinary individual, not with a man bound by special covenants."

"Slander of Goods" in England and Germany.

"BUSINESS men are allowed to say that their goods are better than others"; this casual remark in *The Law Journal* of 27th February, 1934, p. 104, draws the attention to a maxim in which the English law differs fundamentally from that of other nations. Even in confining the comparison to Germany we shall find that the English legal customs, in this point, do not get through too well.

The matter we propose to deal with is technically known as "slander of goods" or "trade libel," although both terms are inaccurate as, according to English law, no libel or slander occurs in these cases, the defendant practically always having a good defence open to him, namely, the claim that his statements were merely a "puffing" or flattery of his own goods, and thus only an incidental belittling of the plaintiff's wares.(1) Quite a number of cases have been decided accordingly of which we must review a few briefly to understand the principle.

In *Hubbock & Sons* v. *Wilkinson Heywood & Clark Ltd.* [1899] 1 Q.B. 86, the slander was supposed to lie in the publishing by the defendants of a report stating that their zinc had a slight advantage over another's, while being cheaper. The defendants claimed that for a person in trade to puff his own wares and to proclaim their superiority over those of his rivals could not be actionable. The judge (Lindley, M.R.) shared this opinion, and said: "The truth is that the defendant's circular when attentively read comes to no more than a statement that the defendant's white zinc is equal to, and, indeed, somewhat better than, the plaintiffs'. Such a statement, even if untrue and the cause of loss to the plaintiffs, is not a cause of action. Moreover, an allegation that the statement was made maliciously is not enough to convert what is *primâ facie* lawful into a *primâ facie* unlawful statement. It is not unlawful to say that one's own goods are better than other people's."

Already in *Evan* v. *Harlow* (1844), 5 Q.B. 624(2), it is stated that any tradesman offering goods for sale exposes himself to observations of this kind and that it is not by averring them to be false, scandalous, malicious and defamatory, that a plaintiff can found a charge of libel upon them. To decide thus might, said the judges, expose every man who proclaims his goods to be better than another's to the risk of an action, and to consider such statements as libellous would mean putting down ninety-nine out of every hundred advertisements of articles we see.

It is, however, a completely different matter to assert that a plaintiff's goods are bad from calling them inferior to one's own wares, as—while the latter statement is, in form, only a criticism of goods—the former relates to a man's conduct of business, and therefore involves a reflection on the seller or maker, and can, for this reason, be the foundation of an action for slander.(3)

In order to constitute a disparagement which is, in the meaning of the law, injurious, it must be shown that the defendant's representations (1) were made of and concerning the plaintiff's goods; (2) were in disparagement of his goods and untrue; and (3) have occasioned special damage to the plaintiff.(4) In consequence, although false disparagement of another's goods must be distinguished from excessive praise of one's own goods (5): as long as the advertiser merely puffs his own wares, he is safe, and only if his statements constitute not only a caution against his rival's goods, but reflect upon the plaintiff himself, may he be held liable.(6)

It is somewhat difficult (7) to define the exact degree of malice necessary to sustain the action. It can, however, be said that only in case the "puff" be so outrageously strong that, if untrue, it amounts to a deliberate disparagement of the other side's wares, an action might lie.(8) In several decisions (9) it is expressly stated that where the object of an advertiser is to push his own business, there is no malice, no matter how untrue the opinions he expresses may be, and no matter what damage they may incidentally cause to the business of a rival, provided the act is not done with the direct object of this injury. As cases where the intention of the puff is *merely* to injure the plaintiff's business are extremely rare and practically never provable (10) the fact of a man being a rival trader confers upon him nearly absolute immunity for all he may say in disparagement of his rival's goods.

Even the advertisement of a newspaper (11) that its circulation was "20 to 1 of any other weekly in the district" would be unlawful only if special damage resulted from this publication, although the puffing here amounted not merely to a false pretence but to an actual mis-statement of facts.

The rules leading to this undesirable result have, obviously, been established to prevent traders from using litigation as a means of advertising,(12) but they have been carried so far by the permanent jurisdiction of the English courts that they are apt to influence one of the principles any respectable advertiser insists upon most rigidly: that it is bad advertising, both from the point of view of technical skill and of business propriety, to disparage the goods of rival traders and advertisers.(13)

In one of the cases which may be considered to have overstepped the mark, the facts were as follows:(14) The plaintiffs (Mellin) were the producers of victuals which they sold in bottles enclosed in wrappers bearing the words: "Mellin's Infants' Food." The defendants (White) being the proprietors of Vance's food, sold the plaintiff's bottles after affixing to the wrappers a label: "The public are recommended to try Dr. Vance's food for Infants and Invalids, it being far more nutritious and healthful than any other preparation yet offered."

The action was dismissed, although it seems reasonable to suggest that the case even falls under s. 45 of the Trade Marks Act, 1905, which provides the right of action against any person who passes off goods as those of another, and so attracts to himself the custom which would otherwise flow to his rival.

A jurisdiction which permits advertisements of this sort unavoidably, at the same time, encourages them and, in consequence, leaves a very full scope for unfair competition. Therefore, all advertising directed against one specifically mentioned competitor should be, and in many countries—and probably also by many English people—is, considered *contra bonos mores*.

Particularly in Germany the so-called "personal advertising" may not lead to the "blackening"(15) of another's wares. There, too, a business man may sound his own trumpet, but it is not considered legal to name rivals in the trade and to compare one's goods to theirs.

On the other hand, highly-coloured and exaggerated terms like "the best in the world" are not held to be misrepresentations in the legal sense, because—puffing being an old and well-understood practice—a certain latitude must be allowed to traders in extolling the quality of the things they have to sell, and purchasers must be expected to be capable of exer-

(1) Ling-Mallison: "The Law relating to Advertising," 1930, pp. 73-75.
(2) Reprinted in English Reports, Vol. 114, p. 1384; see also *Young* v. *Macrae* (3 B. & S. 264), reprinted in English Reports, Vol. 122, p. 100, and *Alcott* v. *Millar's Karri & Jarrah Forests Ltd.* (1904), 91 L.T. 722.
(3) See *Griffiths & Another* v. *Benn* (1911), 27 T.L.R. 346.
(4) *Lyne* v. *Nicholls* (1906), 23 T.L.R. 86.
(5) *Allan* v. *Flood* [1898] A.C. 1 (10).
(6) *Linotype Co. Ltd.* v. *British Empire Type Setting Machine Co. Ltd.* (1899), 81 L.T. 331. See also Halsbury, "The Laws of England," 1911, Vol. 18, s. 1184, Notes *l* and *m*.
(7) Odgers' "Libel and Slander," 1911, p. 93.
(8) *Lyne* v. *Nicholls*, *supra*.
(9) *Dunlop Pneumatic Tyre Co. Ltd.* v. *Maison Talbot & Others* (1904), 20 T.L.R. 579; *Spalding* v. *Gamage & Benetfink*, 29 T.L.R. 541.
(10) *Western Counties Manure Co.* v. *Lawes Chemical Manure Co.* (1874), L.R. 9, Ex. 218; *Ratcliffe* v. *Evans* [1892] 2 Q.B. 524; see also Addison, "Treatise on the Law of Torts," 8th ed., p. 193.
(11) *Lyne* v. *Nicholls*, *supra*.
(12) Salmond, "The Law of Torts," 1924, p. 554.
(13) *The Law Times* (1930), Vol. 170, p. 414.
(14) *White* v. *Mellin* [1895] A.C. 154.
(15) The French actually use the term "dénigrement,"

cising reasonable judgment and discrimination.(16) Although such statements are certain to be more detrimental to close neighbours than to business men in other parts of the town or country, they cannot, on principle, be held to be equivalent to statements which expressly mention competitors as selling inferior goods. But ss. 14 and 15 of the Unfair Competition Act (Gesetz gegen den Unlauteren Wettbewerb) of 1909 expressly state that whoever, for reasons of competition, asserts or circulates facts concerning the business, the goods or the trading efficiency of another person which are fit to damage the business or the repute of its proprietor is liable to restore the caused damage, if he cannot prove the truth of the facts.

As some members of the public can always be found to disagree with the defendant's statements, their truth is practically unprovable, and it so becomes immaterial whether the statement was actually true or not. But the German courts cannot avoid entering into an inquiry as to the comparative merits of goods of rival traders, and while—in Germany as in England—an action will lie if X asserts, without just cause, " A's foods for infants contain starch," when there is no starch in them, and damage follows, A—in Germany—has a good cause for action also if X uses words like " My goods are far superior to A's," if the words have been written maliciously and have caused special damage to A.

Even where the above-mentioned Act fails to cover the facts of a case, there may still be an offence against general principles of German Law.(17)

The aim of the Supreme Court (Reichsgericht) in dealing with these cases always is to safeguard business people against losing their fair repute and the confidence of their customers which they have attached to their firm by their skill, patient diligence and respectability. In a decision of 1927(18), the court says that the defendant who puffed his goods must be considered unable to prove the truth of his statements as he had compared his goods with those of his rivals asserting that his were cheaper, but had not added that the goods of his rivals were of a better quality, and that the rival firms also stocked cheaper qualities. The public, therefore, naturally stood under the impression that only minimum prices had been compared, and this omittance of relevant facts is unworthy of a respectable business man.

In another case decided by the Supreme Court in 1915,(19) the defendants disposed of goods which were not manufactured by the plaintiffs (The Gerlock Packing Co.), but were—in letters and circulars—described as " Gerlock Packing Substitutes." The judges held that the defendants used a competitor's name and the reputation which his goods had obtained, thanks to his efficiency, solely for the purpose of introducing their own wares and of facilitating their sale to the rival's detriment, and that they were therefore liable for damages.

Further recent decisions of the Supreme Court are of 20th May, 1931(20) (cement), 6th October, 1931(21) (malt), 25th November, 1932(22) (candles), and 13th February, 1934(23) (soporiforous drugs). They all show that these methods of advertising are forbidden in Germany, no matter if the rival has actually suffered damage or not, and even if there was no intention of causing damage. Personal advertising is therefore permissible only in so far as it (1) is in accordance with the true facts, (2) sticks to dignified appearances, and (3) is brought about for sufficient reasons; it is considered immoral not only when the competitor is being run down, but always when the person or the business of a rival is unavailingly exposed to the eyes of the world. The judges rightly think that this is generally only done with the aim of making the advertisers' less-known goods popular by attaching their name to that of the better-known ones of his rival or for the purpose of casting suspicion on these (*semper aliquid hæret*).(24)

This sort of advertising is all the more dangerous when it palliates its true purpose by employing scientific arguments, science altogether being far too much abused for trade purposes. " The goods, not the words, of a business man should convince."(25)

Only in very rare cases does the Supreme Court dismiss an action on the ground that the advertiser's aim is to enlighten the public on facts the knowledge of which would be in its own interests.(26) And it is a matter of dispute when that is the case. The German branch of the English Dunlop Rubber Co., Ltd., sued a German firm(27) because the latter had issued a pamphlet in which it opposed the import of foreign goods into Germany, and, with express reference to the English company's advertisements and posters (" Dunlop as British as the flag "), had added remarks to the effect that their (the defendants') entire firm, their factory, workmen and capital, were, without any exception, German. While, by some, the opinion is upheld that it cannot be called malicious to draw the attention of the public to the fact that a firm is a branch of a foreign one and should therefore not be considered to be of an absolutely non-alien character, the Supreme Court calls this behaviour unfair competition, because the pamphlet, by mentioning the plaintiffs' posters and the defendants' wares in one and the same breath, was less a propaganda against foreign goods than a competitive advertisement directed against the plaintiffs.

Unfortunately recent politics in Germany seem to influence even this problem. Lower courts are inclined to rank nationalism before jurisprudence. This is shown by a decision of the Duisburg Provincial Court(28) which deals with the case of a Roman Catholic newspaper applying for the restriction of a canvasser for a Nazi paper from threatening prospective subscribers with disadvantages if they should refuse to order the newspaper represented by him. The accusation of the Catholic paper that such threats represent unfair competition was rejected by the court on purely political grounds (" the so-called Catholic Press is superfluous "). But, on the whole, the healthy opinion still prevails in Germany that " slander of goods " contributes towards making the art of advertising, and with it the whole business life, undignified, brutal and repulsive, and that it should be repressed.

(16) See F. P. Bishop, " Advertising and the Law," 1928, p. 67.
(17) Bürgerliches Gesetzbuch, s. 823; Unlauterer Wettbewerbsgesetz, s. 1.
(18) RGZ 116.280; reprinted, " Juristische Wochenschrift," 1927, p. 1574, No. 1.
(19) RGZ 86.123.
(20) " Juristische Wochenschrift," 1932, p. 1883, No. 42.
(21) " Juristische Wochenschrift," 1932, p. 3339, No. 10.
(22) " Juristische Wochenschrift," 1933, p. 1722, No. 9.
(23) " Juristische Wochenschrift," 1934, p. 1490, No. 8.
(24) Baumbach, " Das gesamte Wettbewerbsrecht," 1931, p. 155.
(25) Baumbach, " Juristische Wochenschrift," 1932, p. 3340, Note 10.
(26) See, for example, " Juristische Wochenschrift," 1933, p. 1723, Note by Dr. Nerreter.
(27) Decision of 10th March, 1933, reported in " Juristische Wochenschrift," 1933, p. 1578, No. 2; see also note by Dr. Schlechtriem.
(28) Reported in *The Times* of 4th April, 1934.

Company Law and Practice.

Contracts Constituted by the Articles of Association —II.

I DISCUSSED last week the binding effect of the articles of association as a contract between the company and its members and between the members *inter se*; and this week I proceed to consider the position of non-members (including, as you may recollect, members who in some other capacity than that of member have dealings with the company) in relation to provisions in the articles which concern them.

It is clear that an outsider to whom the articles purport to give specific contractual rights cannot sue on those articles, treating them as contracts between himself and the company, to enforce those rights. He is not a party to the articles and so cannot sue on the contract contained therein. In *Melhado* v. *Porto Alegre Railway Company*, L.R. 9 C.P. 503, the articles provided that the company should defray such expenses incurred in its establishment as the directors should consider might be deemed and treated as preliminary expenses. The

plaintiffs, who were promoters of the company, had incurred preliminary expenses in its establishment, but it was held that no action for these expenses would lie at the suit of the plaintiffs against the company under the articles.

Other instances can be found in the reports of what is, after all, only an application of a well-known principle of the law of contract, viz., that no *jus quæsitum tertio* arises by way of contract. As it was put by Lord Cairns in *Eley* v. *Positive Life Assurance Company*, L.R. 1, Ex. D. 88: "Articles of association, as is well known, follow the memorandum, which states the objects of the company, while the articles state the arrangement between the members. They are an agreement *inter socios* and in that view [the relevant article] becomes a covenant between the parties to it that they will employ the plaintiff. Now, so far as that is concerned, it is *res inter alios acta*, the plaintiff is no party to it. No doubt he thought that by inserting it he was making his employment safe as against the company; but his relying on that view of the law does not alter the legal effect of the articles. This article is either a stipulation which would bind the members, or else a mandate to the directors. In either case it is a matter between the directors and shareholders and not between them and the plaintiff." In that case the articles of association contained a clause in which it was stated that the plaintiff should be solicitor to the company and should transact its legal business, and should not be removed except for misconduct. The articles were registered and the company incorporated, and eleven months later the plaintiff was allotted shares, and so became a member. He was never appointed solicitor by any resolution of the directors or by any instrument under the seal of the company, but he acted as such for a time. Subsequently the company ceased to employ him, and he brought an action against the company for breach of contract in not employing him as its solicitor. It was held that he could not succeed since the articles created no contract between him and the company.

It will be noted that the plaintiff was a member of the company; and it will be recalled that s. 16 of the Companies Act, 1862 (s. 20 (1) of the 1929 Act) provides that the articles shall bind the company and the members as if the members have covenanted under seal to observe their provisions. Neither in the Exchequer Division (L.R. 1 Ex. D. 20) nor in the Court of Appeal do the judgments appear to have contemplated the possibility of the company being bound to employ the plaintiff by virtue of this statutory definition of the effect of the articles. The contention would undoubtedly have been difficult to uphold since the plaintiff did not become a member for nearly a year after the articles containing the provisions as to his employment had been registered; the contractual relation arising under the articles between him and the company by virtue of s. 16 of the 1862 Act could not arise till his shares had been allotted; and to say that on the shares being allotted the company was bound to employ him would be equivalent to holding that on the allotment of the shares a contract arose between him and the company as to a matter not connected with the holding of the shares.

In any event, this point would appear to be finally settled by the later decision in *Browne* v. *La Trinidad*, 37 Ch. D. 1. There, before the formation of the company, an agreement was entered into between the plaintiff and a person as trustee for the intended company by which it was stipulated, *inter alia*, that the plaintiff should be a director and should not be removable till after 1888. Clause 6 of the articles provided that the directors should adopt and carry into effect the agreement with or without modification, and that, subject to any modification, the provisions of the agreement should be construed as part of the articles. The agreement was acted upon, but no contract adopting it was entered into between the plaintiff and the company. It was held that, treating the agreement as embodied in the articles, there was still no contract between the plaintiff and the company that he should not be removed from being a director, the articles being only a contract between the members *inter se* and not between the company and the plaintiff.

In this case, too, the plaintiff had, by the allotment of shares, become a member; but the Court of Appeal, following the decision in *Eley* v. *Positive Life Assurance Company*, *supra*, had no difficulty in disallowing his claim. They did consider how far s. 16 of the 1862 Act affected the position, and Lindley, L.J., said: "Having regard to the construction put upon s. 16 of the Companies Act of 1862 in the case of *Eley* v. *Positive Life Assurance Company* and subsequent cases, it must be taken as settled that the contract upon which he relies is not a contract upon which he can maintain any action either on the common law side or the equity side. There might have been some difficulty in arriving at that conclusion if it had not been for the authorities, because it happens that this gentleman has had shares allotted to him, and is therefore a member of the company. Having regard to the terms of s. 16, there would be some force or at all events some plausibility in the argument that being a member, the contract which is referred to in the articles has become binding between the company and him." Whatever the force or plausibility of that argument, the court considered the matter settled by authority; though one takes leave to question the accuracy of Lindley, L.J.'s description of that authority since, in *Eley* v. *Positive Life Assurance Company*, *supra*, there does not appear to be any express construction put upon s. 16 of the 1862 Act, nor do there seem to be any "subsequent cases" on the point. However this may be, the decision is there and is binding; if an article purports to give rights to an outsider in his capacity as such, then, whether he is or subsequently becomes a member, he cannot sue on such an article to enforce rights which are *res inter alios acta* and not part of the general rights of the corporators as such.

The contractual effect then of the articles of association appears to be capable of statement thus:—

(1) Articles regulating the rights and obligations of the members generally as such do create rights and obligations between them and the company respectively.

(2) No article can constitute a contract between the company and a third person.

(3) No right merely purporting to be given by an article to a person, whether a member or not, in a capacity other than that of a member, e.g., as solicitor or director, can be enforced against the company.

I can well imagine that the last-mentioned rule will at once give rise to the question: how (to take an everyday instance) can a director who has no separate contract with the company enforce any rights to remuneration given to him by the articles? He cannot, as we have seen, sue the company on any contract constituted by the articles because he would not be suing in his capacity of member. But if, on the footing of the articles, he enters into the relation with the company, accepts office and is employed by the company, the fact of a contract of service is established independently of the articles, and the articles may be looked at to see what are the terms of the employment; they are embodied in and form part of the contract between the company and the director. See, for example, *Swabey* v. *Port Darwin Gold Mining Company*, 1 Meg. 385, where Lord Esher said: "The articles do not themselves form a contract, but from them you get the terms upon which the director is serving." The logical way of looking at it is probably this, that the articles amount to an offer put forward by the company to persons intending to become directors of the terms on which the directors are to act; and the directors, by becoming and acting as directors of the company, accept that position. On the same footing, of course, the obligations which under the articles are attached to the office of director (e.g., taking qualification shares) are enforceable against the director: see *Re Anglo-Austrian Printing and Publishing Union* [1892] 2 Ch. 158, where, at

p. 164, Stirling, J., sums up the matter in these words: "Where a man has accepted the office of director and acted as such, there ought to be inferred an agreement between him and the company, on his part that he will serve the company on the terms as to qualification and otherwise contained in the articles of association, and on the part of the company that he shall receive the remuneration and all the benefits which those articles provide for directors."

A Conveyancer's Diary.

Settled Land where Vesting Deed not required.

I HAVE had to consider the question of beneficiaries under a settlement joining in conveying the settled land and avoiding the necessity for the purchase price being paid to the trustees of the settlement. If there has been no vesting deed, then there are two ways in which that can be done.

In the first place, the reader hardly needs to be reminded that under s. 1 (1) (v) of the S.L.A. a settlement is constituted where land stands for the time being "charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rent-charge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portion, advancement, maintenances or otherwise for the benefit of any persons, with or without any term of years for securing or raising the same."

So, as the Act stood until it was amended, land which had been sold subject to any such rent-charge, etc., but with an indemnity against it, became settled land.

The result of that appears from s. 13:—

"Where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour, then until a vesting instrument is executed or made pursuant to this Act in respect of the settled land, any purported disposition thereof *inter vivos* by any person other than a personal representative (not being a disposition which he has power to make in right of his equitable interest or powers under a trust instrument), shall not take effect except in favour of a purchaser of a legal estate without notice of any settlement, but, save as aforesaid, shall operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate shall not be concerned with such disposition unless the contract is registered as a land charge."

So a perfectly chaotic state of things arose where land had been sold subject to a rent-charge to which s. 1 (1) (v) applies, with an indemnity against it. That was no uncommon thing where large estates were sold in plots. Each plot remained settled land, and no conveyance of it could be made so as to pass a legal estate until there had been trustees for the purposes of the Act and a vesting instrument—and, of course, the purchase price would have to be paid to the trustees.

Then the L.P.(Amend.)A., 1926, was passed and provided a remedy for that by enacting (s. 1 (1)):—

"Nothing in the S.L.A., 1925, shall prevent a person on whom the powers of a tenant for life are conferred by para. (ix) of sub-s. (1) of s. 20 of that Act from conveying or creating a legal estate subject to a prior interest as if the land had not been settled land."

So that furnishes an instance where a tenant for life may convey a legal estate without there having been any vesting deed. Of course it would be the same if there had been a vesting deed—but that is a case where a deed is not necessary in order that a legal estate may be conveyed.

Another case is where the legal estate had automatically vested in the tenant for life and all those beneficially interested joined to convey.

The well-known case of *Re Alefounder's Will Trusts* [1927] 1 Ch. 360, is the authority in point.

On 16th December, 1925, the defendant Alefounder became entitled to settled estates as adult legal tenant in tail in possession with remainders over, but without any overriding trusts or incumbrances.

On 1st January, 1926, when the L.P.A. came into force, Alefounder became automatically the estate owner, holding the legal fee simple in trust for himself as equitable tenant in tail, with remainders over, under the transitional provisions in the 1st Sched., Pt. II, paras. 3, 5 and 6 (*c*) of that Act.

The question arose whether, if he barred his equitable entail, he could then make a valid disposition of the legal estate as absolute legal owner in fee simple, or whether he must make use of the "simplifications" introduced by the new legislation and first obtain a vesting deed pursuant to s. 13 of the S.L.A.

A summons was issued by the S.L.A. trustees for the determination of that question.

The trustees' counsel contended in favour of the defendant that there was no need for any vesting deed, and the defendant's counsel adopted his argument.

It will be noticed in the first place that once the defendant had disentailed his equitable tenancy in tail the settlement came to an end, and it would not then be possible to frame a vesting deed to meet the requirements of s. 5 of the Act. That section requires that a vesting deed shall contain (1) a description of the settled land; (2) a statement that the settled land is vested in the person to whom it is conveyed or declared to be vested; and (3) the names of the persons who are the trustees of the settlement.

Now it is clear that none of these requirements could be satisfied after the disentailing deed had been executed. There was no settled land then, so (1) and (2) could not be complied with; neither could (3) as there would be no settlement and no new trustees could be appointed.

That seemed to dispose of the matter. Astbury, J., based his judgment, which was in favour of the defendant, partly on that ground, but also upon the ground that on its true construction s. 13 could not have been intended to prevent a valid disposition in a case such as that where the defendant was estate owner at law and on barring his equitable entail would become equitable owner in unincumbered fee simple in possession.

The second ground leads to the conclusion that even where there has been a vesting deed and the tenant for life becomes entitled to all the equitable interests in remainder without any overriding trusts or incumbrances he can alone make a good title, and *a fortiori* that if the tenant for life and all those equitably entitled in remainder join together in conveying, they can make a good title to a purchaser.

It still appears, however, that a purchaser would not be bound to accept such a title even if it were contracted for.

Section 42 of the L.P.A., 1925, would, it is thought, apply.

It will be remembered that that section enacts that a stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void if a title can be made discharged from the equitable interest without such concurrence (*a*) under a trust for sale; or (*b*) under that Act or the S.L.A., 1925.

Of course, that section did not apply in the *Alefounder Case*, because a title could not have been made, after a disentailing deed had been executed, under the S.L.A. as there could not then have been any vesting deed.

Judge Robert Ernest Moore, of Blackheath, Count yCourt Judge of Southwark, Greenwich, and Woolwich since 1927, and Judge of County Courts on the Durham Circuit, 1919-27, left estate of the gross value of £6,692, with net personalty £4,018.

Landlord and Tenant Notebook.

Proof in Forfeiture Cases.

It has for centuries been the rule that a lessor seeking to enforce a proviso for re-entry must expect no assistance from a court by way of discovery or interrogatories. A forfeiture action is a penal action, and the landlord must prove all he alleges by evidence adduced by himself. Some years ago, it looked as if an exception to or modification of this iron rule had been sanctioned; but the authority of *Earl of Powis* v. *Negus* [1923] 1 Ch. 186, was of brief duration, the decision being overruled by *Seddon* v. *Commercial Salt Co. Ltd.* [1925] Ch. 187, C.A.

In both these cases the cause of forfeiture relied upon was the parting with possession without the consent required by the lease (or underlease, as it was in the second case). In *Earl of Powis* v. *Negus* the relevant facts were that the plaintiff claimed possession against three defendants, namely, the lessees, and two companies to whom they were alleged to have assigned parts of the premises (a quarry and offices); alternatively, it was claimed that the first defendants had let the companies into possession, which was sufficient to constitute a breach of the covenant cited. All three defendants having denied the allegations, the plaintiff issued a subpœna *duces tecum* to the secretary of the two companies requiring him to produce specified books over a specified period. The defence objected, and relied, in argument, on a long series of authorities showing that a defendant in forfeiture proceedings was not to be asked to admit the forfeiture—the first case mentioned being *R.* v. *Friend* (1696), 1 How. St. Tr. 1. The plaintiff's reply amounted to this: I am not forfeiting your interest which you deny possessing; as against you I am merely claiming ejectment. And this was accepted by Sargant, J., who said the defendant companies were indeed in a dilemma: admission meant surrender, denial implied no protection because there was no forfeiture as against them.

But in *Seddon* v. *Commercial Salt Co. Ltd.*, in which the point arose when the plaintiff took out a summons against one of the alleged sub-lessees or transferees for an affidavit of documents, the Court of Appeal reversed the decision of Russell, J., who had considered himself bound by the above case. Pollock, M.R., merely said that Sargant, J., had recognised the old-established rule, but held that there was no forfeiture; this looks like distinguishing rather than overruling, but Warrington, L.J., added that he could not see how the decision that there was no forfeiture against the companies was arrived at, and Scrutton, L.J., said, in terms, that the older decision was wrong, so "overruled" is, I think, its correct description. Indeed, while many of us consider that too much sympathy is extended to tenants now that Parliament has not only approved but improved upon the attitude taken by equity in the old days, to say that a claim for possession based upon forfeiture of someone else's interest is outside the rule seems to be splitting hairs.

One of the leading cases illustrating the rule is *Doe d. Bridger* v. *Whitehead* (1828), 8 A. & E. 571, in which failure to insure was the cause of forfeiture assigned. The evidence was that the landlord's agent had asked the tenant whether he had insured, and, if so, in what office, and would he show the receipt for the premium; the tenant had said nothing and produced no receipt. It was argued that the landlord could not be expected to go round all the insurance offices, but Denman, C.J., held that no forfeiture had been proved. Nowadays, of course, covenants to insure generally contain a promise to produce receipts, so that the difficulty does not arise.

Another leading case, *Toleman* v. *Portbury* (1870), L.R. 5 Q.B. 288, concerned a covenant not to permit any sale by auction without the written consent of the plaintiff landlord. The latter proved that the tenant had granted a bill of sale over his furniture to one party, and sub-let the house to another, and that during the currency of the underlease the grantee of the bill of sale had had the furniture sold by public auction conducted on the premises. Possibly by an oversight he failed to give in evidence that he had not given his written consent; four judges of the Exchequer Chamber held that this was fatal, all the circumstances of the forfeiture must be proved; three others based their judgment on the point that there was no permission by the tenant, who could not interfere.

The facts of the last-mentioned case were somewhat special, and the difficulty of proving failure to insure has, as I have pointed out, been disposed of; but to prove breach of a covenant against alienation when the alleged alienee is a company—a corporate but not a corporeal body—remains a delicate task. The mere presence of agents of the company is consistent with observance by the tenant of even the well-drawn elaborate covenant which specifies not only assigning and sub-letting, not only parting with possession, but also sharing possession (and perhaps, *ex abundanti cautela*, parting with or sharing the "occupancy"). This sort of covenant may obviate the substantial difficulty revealed in *Chaplin* v. *Smith* [1926] 1 K.B. 198, C.A., in which the tenant had "turned himself into a company" which he agreed to allow the "use" of the premises and which agreed to indemnify him against rates and taxes, and which was subsequently "acquired" by another company. It was held in that case that as long as the tenant retained effective control he had not broken a covenant limited to sub-letting and assigning; but the difficulty of proving the case without discovery remains.

Our County Court Letter.

LIABILITY FOR STRAYING CATTLE.

The above subject has been considered in three recent cases. In *Jones* v. *Davies*, at Oswestry County Court, the claim was for £1 15s. as the amount of damage to furniture. The plaintiff's case was that (1) while a herd of twelve cows was being driven along the road (by the defendant and another man) two of them turned up a narrow entry and entered the plaintiff's living room; (2) the latter was 32 yards back from the road, and the door had been opened to admit air; (3) cows had trespassed on a previous occasion, and the defendant should have stationed a man at the entry to keep the animals out. The defendant's case was that (*a*) his assistant was in front of the cows (which were approaching cross roads) and he himself was behind; (*b*) they both did all they could to bring the two back from the entry; (*c*) he had not been negligent, and was not liable by reason of *Tillett* v. *Ward* (1882), 10 Q.B.D. 17. His Honour Judge Samuel, K.C., observed that there was no obligation upon the plaintiff either to provide a gate to the entry or to keep his kitchen door shut, and judgment was given in his favour for the amount claimed, with costs.

In *Maddy* v. *Rutter*, at Lincoln County Court, the claim was for £100 (as damages for negligence and nuisance) in the following circumstances: (1) the plaintiff (a postman) had been cycling on the evening of the 19th December, when he collided with four of the defendant's sheep; (2) the latter had broken out of a field, and were straying on the highway, as result of which the defendant had been fined by the magistrates; (3) the plaintiff (having sustained a fractured skull) was away from work for sixteen weeks. The defence was that (*a*) there was no absolute obligation (on the occupiers of fields) to keep sheep off the roads, and reasonable precautions had been taken, by repairing the fence; (*b*) the accident was due to the plaintiff's own negligence, as the night was misty, and he should have dismounted on meeting a patch of fog. His Honour Judge Langman (in a reserved judgment) held that (1) the fact of the conviction and fine did

not necessarily render the defendant liable in damages; (2) although the sheep had found a weak spot in the fence, the previous repairs showed that there had been no negligence by the defendant; (3) the allegation of nuisance also failed, as the accident admittedly would not have happened had it not been for the mist, and four sheep were not an obstruction in ordinary circumstances. Judgment was therefore given for the defendant, with costs, notice of appeal being given. Compare *Heath's Garage* v. *Hodges* [1916] 2 K.B. 370.

In *Morris* v. *Davies*, at Hereford County Court, the claim was for £100 as damages for trespass, the plaintiff's case being that (*a*) on the night of the 29th December, a flock of sixty or seventy sheep broke through from the defendant's land into that of the plaintiff, whose fence was in perfect condition; (*b*) damage had been done to 15,075 cabbage plants, which would have been worth 2s. 6d. per dozen in the ground (the purchaser doing the cutting and carting) as good cabbages were worth £200 to £250 an acre at present, as opposed to £50 an acre in a normal year. The defendant's case was that (1) he had had trouble in December, from sheep straying on to his land, but they belonged to another farmer; (2) his hedges were repaired every year, and rabbits might have damaged the plaintiff's cabbages; (3) the latter were not worth more than £18. His Honour Judge Roope Reeve, K.C., remarked that, although four or five witnesses had stated that they had seen sheep in the plaintiff's field, the evidence was only circumstantial (and not direct) that they belonged to the defendant. Judgment was therefore given in the defendant's favour, with costs.

THE SCOPE OF THE TRADE BOARDS ACTS.

In *Marshall* v. *Woodbridge Canning Co. Ltd.*, recently heard at Woodbridge County Court, the claim was for £6 8s. 9d. as overtime wages under the Trade Boards Acts, or alternatively at common law. The plaintiff's case was that (1) in October, 1932, he was engaged as a dispatch man at a salary of 35s. per week (to be raised to £2 after three months), his hours being from 8 a.m. to 5 p.m.; (2) he had also done different work in the evenings, for which he was offered supplementary pay, but he had refused this—on account of its inadequacy. The defence was that (*a*) the plaintiff's hours were not fixed, as he was expected to do all the dispatch work; (*b*) the Trade Board rates were mostly paid to workers who only worked for four months in a year, whereas the plaintiff's work extended over the whole year—eight months being slack. His Honour Judge Hildesley, K.C., remarked that, as the Minister of Labour had decided that the plaintiff was not within the Trade Boards Acts, the claim thereunder was misconceived. As there was no express or implied contract for overtime payments, the alternative claim also failed. Judgment was therefore given for the defendants, with costs.

LIABILITY FOR DAMAGE BY HARRIERS.

In a recent case at Salisbury County Court (*Rawlins* v. *Watson and Pearson*) damages were claimed against the first defendant as master, and against the second defendant on behalf of the committee and members of the Royal Artillery Harriers. The plaintiff's case was that (1) on Boxing Day he had 260 breeding ewes in a pen, when four or five hounds leapt into it, followed by a horseman, whose intention was to clear the hounds out; (2) the sheep were very frightened, and thirteen breeding ewes, thirty-eight lambs and three tegs died. The defence was that no horsemen entered the pen, and only three hounds were inside—for a maximum period of thirty seconds. His Honour Judge Hyslop Maxwell held that, although no horseman entered the pen, it was possible for a few hounds (in a short time) to do much damage among in-lamb ewes. Judgment was given for the plaintiff for £61 2s. 6d. and costs.

Reviews.

Forensic Success or Malpractice and Procedure. By S. T. Uff. 1934. Crown 8vo. pp. x and 99. London: Butterworth and Co. (Publishers), Ltd. 3s. 6d. net.

Here is a satirical little book which takes the reader through every stage of an action at law with shrewd and sarcastic comments on the working and management of procedure. The author's touch is perhaps not light enough, the wit not sufficiently airy to command the universal appeal of the productions of O. to whom the work is dedicated, but lawyers can hardly fail to be amused and even perhaps instructed. The illustrations are admirable.

German Commercial Policy. By Dr. Wilhelm Röpke. 1934. Demy 8vo. pp. viii and (with Index) 86. London: Longmans, Green & Co. 5s. net.

This is the first to appear in English of a series issued under the auspices of the Graduate Institute of International Studies at Geneva. It is a remarkably clear study of one portion of the world's most pressing problem, but that portion is presented, as it ought to be, as part of a whole.

"The commercial policy of a country is like a mirror reflecting all the economic, political and social determinants of the time." German commercial policy, accordingly, presents to the world the picture of a great and hardworking people building up a large industrial structure, making economic room for millions more of people who "have come to stay." Side by side with this is a ferocious will to agricultural self-sufficiency; and the two things cannot exist together. "The time-honoured policy of grain protection in the interest of the great land owners of Eastern Germany has been carried on with a resoluteness proportionate to the growing obstacles, and this very policy has now engulfed the whole economic structure of Germany." Grain, especially rye, at twice and sometimes three times the world price, has been forced upon Germany with almost fatal effect. The high cost of foodstuffs puts up the price of dairy produce. The consumer with a heavy charge on his budget for food (clothing too, is affected) cannot buy the products of industry as he otherwise would. The refusal to import kills export, and so comes autarchy to a people hurt in both home and foreign markets. They are self-sufficient at the price of poverty and suffering.

The condition of Germany is partly the product of her own vicious agricultural policy, but the expedients which make it worse are adopted everywhere—tariffs, quotas, exchange restrictions. The peoples are at war, war far more exhausting than campaigns in the field. Possibly nothing can now avert a drastic simplification of European life and a heavy fall in population. The millions may not "have come to stay" after all.

Books Received.

Tax Cases. Vol. XVIII, Part V. 1934. London: H.M. Stationery Office. 1s. net.

The Problem of the Defaulting Purchaser. Edited by P. R. Watts, B.A., LL.B., Solicitor, Challis Reader in Conveyancing, University of Sydney. 1934. Demy 8vo. viii and (with Index) 144. London: Sweet & Maxwell, Limited. Sydney, Melbourne and Brisbane: The Law Book Co. of Australasia, Limited. 8s. net.

The Conduct of and Procedure at Public, Company, and Local Government Meetings. By Albert Crew, of Gray's Inn, and the Middle Temple, Barrister-at-Law, Recorder of Sandwich. Fourteenth (enlarged) Edition. 1934. Crown 8vo. pp. xxxii and (with Index) 424. London: Jordan & Sons, Limited. 7s. 6d. net.

The Law of Libel for Journalists. By H. P. Lansdale-Ruthven, Barrister-at-Law. 1934. Crown 8vo. pp. (with Index) 208. London: Blandford Press, Limited. 5s. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31 Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Larceny of Daffodils.

Q. 3021. A and B, aged 17 years of age respectively, stole daffodils from Lady C's park. Can proceedings be taken against them under the Larceny Act, 1861, s. 36 ? The park surely must be taken as a pleasure ground.

A. The opinion is given that proceedings can be taken under the Larceny Act, 1861, s. 36. The expression " pleasure ground " nowadays denotes a place of public resort, but it may have denoted a private park in 1861. It is noteworthy that all the other places referred to in the section are private property, and the section is evidently designed to protect plants, etc., in private grounds. There is therefore no reason to limit the scope of the section by reading " pleasure ground " as meaning a public park only. Under the *ejusdem generis* rule, " pleasure ground " denotes private premises, in conformity with the rest of the section.

Compensation for Old Accident.

Q. 3022. A, a workman, was injured, by accident arising out of and in the course of his employment in November, 1932. On recovery he was taken back by employers on same work at same pay, and this went on until early 1934, when owing to slackness of work he was stood off. We need not go into the facts as to how he worked, but the result of the accident is that non-use of the injured arm is most detrimental, with the result that the man is now severely handicapped. Medical evidence is strong on the point. He has only just consulted us. We have got to show reasonable cause for not applying for compensation before. Is it good grounds that he never lost any pay, was taken back on the same work, at the same weekly wage, and therefore, had nothing to arbitrate about until now, when he has to seek fresh employment, with strange employers and different work.

A. There is evidence that the incapacitating element is due to the accident, and the fact of the workman having been taken back (on the same work) is a reasonable cause for the delay in applying for compensation. The incapacity still exists, and the employers are liable to pay compensation. The case is on the other side of the line from *Sigsworth* v. *London and North Eastern Railway Co.*, noted in the " County Court Letter " (under the above title), in the issue of the 11th November, 1933 (77 Sol. J. 792).

Joint Negligence in Running-down Cases.

Q. 3023. We have recently had two collision cases in the county court before different judges, with the following curious results, and we should much appreciate your opinion as to the correctness or otherwise of the judgments. Judge X found that the collision between A and B was due to the joint negligence of A and B, and he held that the plaintiff A lost his claim, the costs of which went to the defendant B, and that defendant B lost his counter-claim, the costs of which went to the plaintiff A. Judge Y also found that the collision between C and D was due to the joint negligence of C and D, and he held that plaintiff C succeeded in his claim against defendant D with costs, and that the defendant D succeeded on his counter-claim against plaintiff C, also with costs. Is there a *ratio decidendi* in such cases. The practical effect is that in the first case each party loses his claim for damages, and so has to bear the cost of repairs to his own car in the usual case where the parties are only insured against third party claims. In the second case each pay the other side's damages, which therefore fall on their insurance companies.

A. The first judgment (that of Judge X) is correct, as the finding of joint negligence implies contributory negligence by the plaintiff, who was therefore rightly held to have lost his claim. For the same reason, i.e., his own contributory negligence, B lost his counter-claim. It was therefore incorrect for Judge Y to hold that each succeeded, and neither C nor D should have been allowed costs on their respective claims. The *ratio decidendi* is that contributory negligence debars a plaintiff (or a defendant on counter-claim) from succeeding.

Costs of Withdrawn Summons for Separation Order.

Q. 3024. I was consulted by a wife, who desired to obtain a separation order from the local magistrates on account of her husband's cruelty. The summons was duly issued and served, and the evidence in support of the application was prepared. On the day of the hearing, however, the wife instructed me to withdraw the summons, as she had become reconciled to her husband. Will you please state whether, in these circumstances, the husband is under legal liability to pay the costs incurred by his wife in connection with the work which was done on her behalf. Please state cases in support.

A. The expenses of matrimonial proceedings justifiably taken by a wife are " necessaries " for which she may pledge her husband's credit at common law. Even if the wife is unsuccessful, or (as in the present case) if she abandons the case on a reconciliation, her solicitor can recover his costs from the husband, provided the solicitor takes proper care, and has reasonable grounds for proceeding, after sufficient inquiries. In the present case, as the evidence in support of cruelty allegations implies interviews with proposed witnesses, the husband is under legal liability to pay the costs incurred by his wife. See *Michael Abrahams, Son & Co.* v. *Buckley* [1924] 1 K.B. 903.

Landlord and Tenant Act, 1927.

Q. 3025. A client of mine purchased a house and shop some twenty years ago and let the same on a monthly tenancy. The tenant has never resided on the premises, but the person who attends to the shop on his behalf resides there. I shall be glad if you will let me know whether in these circumstances the tenant can claim protection of the Rent Restrictions Act. Notice to quit has been given, and it is proposed to commence proceedings to obtain possession of the shop. On receipt of notice to quit the tenant has given a notice to the landlord in which he claims to be entitled to compensation for goodwill which has become attached to the premises by reason of his carrying on business there for more than five years. He further claims that such compensation would be inadequate and requires a new lease to be granted to him in accordance with s. 5 of the Landlord and Tenant Act. It is my client's intention to demolish and rebuild the premises, and I shall be glad if you will let me know what notice, if any, it will be necessary for my client to give in order to put him in a position to contest the tenant's claim.

A. The fact that the tenant is claiming compensation, and a new lease, implies that he will not rely upon the Rent Restrictions Act. Although it is a moot point whether a

statutory tenant can claim the benefits of the Landlord and Tenant Act, there are practical difficulties (of procedure) in the way of his doing so. The landlord by virtue of the Landlord and Tenant Act, 1927, s. 5 (3) (*b*) (ii), can contest the tenant's claim. Under the County Court Rules, Ord. 50 B, Pt. II, para. 5 (4) no proceedings shall be commenced until the expiration of two months from the date of service of the claim for compensation. In the meantime the landlord will have an opportunity of notifying the tenant of the intended demolition, and the tenant, if satisfied of the genuineness of the intention, may abandon his claim. If not, and the tenant serves a summons under the Landlord and Tenant Act, the landlord may (within fourteen days of service of a summons) file a defence under Ord. 50 B, Pt. II, para. 9.

Recovery of Deposit.

Q. 3026. A contracts to sell land to B, who pays him a deposit of £100. After a long dispute over the identity of the property A says to B, "You must either pay the additional expense yourself or cancel the contract." B replies that he agrees to cancel and asks for his deposit back. Under the threat of legal proceedings A sends B his cheque for £100. After B has presented his cheque, but before it has had time to be cleared he receives a letter from A saying that he has stopped payment of the cheque because B has cultivated part of the land and arranged a tenant right valuation. Is there any reason why B should not sue successfully on the dishonoured cheque or would it be advisable to sue for the return of his deposit?

A. There is no reason why B should not sue successfully on the dishonoured cheque, as the fact that he may be liable to A for use and occupation does not entitle A to rescind the subsequent agreement for cancellation of the original contract. By suing upon the dishonoured cheque, B will have the advantage of throwing the onus of proof (of the circumstances in dispute) upon A. If B is claiming a tenant right valuation, this implies that he regarded himself as a tenant, with the result that he is liable to A for rent, or its equivalent. By withholding the amount of the cheque, however, A is in effect levying execution before he has obtained judgment, a procedure he has no right to adopt. If the tenant right valuation exceeds the sum due for rent (an improbable eventuality) A may be liable to pay B more than £100. It appears that A has no defence to a claim on the dishonoured cheque, but that he has a counter-claim for use and occupation.

Intestacy—Brothers and Sisters and the Issue of Deceased Brothers and Sisters taking—Trusts.

Q. 3027. A died in 1933 a widow, intestate, without issue or parent, leaving her surviving a sister, B, and several children of deceased brothers and sisters. Under s. 46 sub-s. (1) (v) the persons entitled are the surviving brothers and sisters of the deceased. However, this section makes no reference to the issue of the brothers and sisters; does s. 47 (1) (i) apply so that the issue of the deceased brothers and sisters take their deceased parents' share?

A. The residuary estate of the intestate is to be held "on the statutory trusts for the brothers and sisters of the whole blood of the intestate" (A. of E.A., 1925, s. 46 (1) (v) (First). These statutory trusts are to be found by reference to s. 47 (3) of that Act and (save that there is no provision for bringing any money or property into account) are the same as those set out in s. 47 (1) of the Act. The result is that the residuary estate will be held "In trust, in equal shares if more than one, for all or any (the brothers and sisters or brother and sister or brother or sister) of the intestate, living at the death of the intestate, who attains the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any brother or sister of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking." The statutory power of advancement and the statutory provisions which relate to maintenance and accumulation of surplus income shall apply (s. 47 (1) (ii), and there are other powers not now material (s. 47 (1) (iv). It is not correct to say that it is the brothers and sisters only who are entitled under s. 46 (1) (v). In our subscriber's case B takes one equal share absolutely, and the other shares will each be held upon trust as above. The denomination of the shares will depend upon how many brothers and sisters left on their deaths before the intestate issue who have survived her, and will be that number plus one (namely B). Thus if there were four such, then the estate will go into fifths.

Interest on Irish Debt.

Q. 3028. A was travelling in Ireland in 1929 for an English firm and had business relations with B, who was agent for C. By arrangement A ordered goods on his own account from C to be debited to B's agency. A left Ireland in 1931, owing to the firm closing down that department, and took business in England. Recently B instructed solicitors in Ireland, and they required payment of debt with interest and costs. A sent cheque for the debt to B and repudiated the claim for interest and costs, as he had never agreed to pay them. The cheque was not cashed and through agents in England B's solicitors are suing for the debt with interest and costs. It seems clear interest and costs are not recoverable in England without agreement to pay them, but what is the position under all the circumstances? Does *lex contractus* apply, and are interest and costs recoverable? Please give authorities if possible for answer.

A. It is assumed that the law applicable is that of the Irish Free State, and not Northern Ireland. Action is being taken in England as the place in which the defendant resides, but the contract is governed by the *lex loci contractus*. The question of whether interest and costs are recoverable is therefore one of foreign law, upon which it would be necessary for the plaintiff to call expert evidence by a legal practitioner in the Irish Free State. Until satisfactory evidence is produced of the right to interest and costs, the claim should be disputed to that extent. No authorities on the point are available.

Enforcing Award of Special Referee.

Q. 3029. A sued B in the High Court on a contract. On an application on the part of the plaintiff that by consent all matters in difference between the parties on the plaintiff's claim and defendant's counter-claim might be referred to the award of a special referee who had been agreed on by the plaintiff and defendant it was so ordered. The special referee found for the plaintiff on a part of his claim and for the defendant on a part of his counter-claim (being less than the sum awarded to the plaintiff) and directed that judgment be entered for the plaintiff for so much of his claim and for the defendant on so much of his counter-claim. Plaintiff has paid the referee's fee and taken up the award, but has not applied for judgment. Defendant's solicitors ask that if it is not plaintiff's intention to enter up judgment the award may be handed to them to enable them to apply for judgment.

(1) In default of plaintiff entering up judgment, is defendant at liberty to do so?

(2) Can defendant compel plaintiff to hand over the award, and if so, on what conditions?

(3) If defendant paid to plaintiff the fees paid by plaintiff in respect of the award, and received the award in exchange for such payment, can defendant recover the amount if it is found on taxation that he is entitled to any costs?

(4) Has defendant any other rights in the matter ?

A. The wrong procedure appears to have been adopted, as the matters in dispute were referred for trial to the special referee, who has directed judgment to be entered in a certain way. As the action began in the High Court, the original award should apparently have been filed in the Central Office or District Registry. The defendant could then have signed judgment by producing an office copy of the award. By permitting the plaintiff to take up the award, the special referee has followed the procedure appropriate only to a submission to arbitration (by consent) out of court. On the specific points raised :—

(1) the defendant is at liberty to enter up judgment, independently of the plaintiff.

(2) It is unnecessary to obtain the award from the plaintiff, as the special referee should be asked to file it in court.

(3) The defendant would be unable to recover the fees for the award, as such payment is unnecessary, if paid to the plaintiff.

(4) The defendant's other rights will only arise in the event of the special referee refusing to file his award. As such refusal would constitute misconduct, it is unlikely that the defendant's further rights will need to be considered.

Settlement—Cesser with Death of Life Tenant—Reversionary Trust for Sale—Form of Assent.

Q. 3030. As subscribers to your paper, we were interested in the " Point in Practice " contained in your issue of 26th May last, being the question *Q.* 2976. We have a matter which appears to be exactly on similar lines to this, except that there is no objection on the part of the administrator of the tenant for life to give an assent. What we were anxious to find was a precedent of such an assent. We have looked through all the precedents we can come across and none of them seems to deal exactly with this question. Could you advise us whether we could obtain a precedent dealing with the exact situation ?

A. We suggest that our subscribers cannot do better than follow Form No. 9 in the 5th Sched. to L.P.A., 1925. As to the effect of such an assent, see S.L.A., 1925, s. 110 (5). Technically the sale will be made under the trust of the assent (as distinct from that of the will).

Liability for Diseased Eggs.

Q. 3031. A, a poultry farmer, purchased a number of eggs from B, another poultry farmer, for hatching purposes. The purchase was on terms that unfertile eggs were not to be replaced, and on the foot of B's note-paper appears the following words : " Conditions of sale—Any sale effected under the above quotation or described in invoice will be subject to the following—All warranties either expressed or implied by section 14 (sub-section 1 & 2) of the Sale of Goods Act, 1893, or at Common Law are expressly excluded from such sale." When the chickens were hatched by A's incubators it appears that they had a disease known to poultry farmers as B.W.D. B states that all his birds have passed free of B.W.D. We should be pleased to hear whether you consider that A has any claim against B.

A. The only point is whether the terms of the sale were brought to the notice of A, i.e., whether the quotation formed part of the contract. On the facts stated there appears to be no doubt about this, and therefore A has no claim against B. The contract could only be held not binding on A on the ground of fraud, viz., that B knowingly sold diseased eggs. In this event, the stipulations on the notepaper would be void, but there is no evidence of such fraud, and the facts point the other way, viz., that B—in spite of precautions—has been unfortunate. The loss must therefore lie where it falls, i.e., upon A.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Judicial Control of Executive Powers.

Sir,—I have read with interest the " Current Topic " under the above heading which appears in to-day's issue of your journal, and should like to bring to your notice the following sentence, which hardly seems to be quite accurate :—

> " The Agricultural Marketing Act, 1931, provides a scheme by which distributing organisations for specific areas ascertain the local prevailing price, and a price is then fixed at which milk may be sold within the area."

The Agricultural Marketing Act does not in fact provide any schemes at all. What it does is to provide facilities for the making of schemes for the regulation of the marketing of agricultural products which may include *inter alia* the matters mentioned in the sentence above quoted. Such schemes, though subject to the approval of the Minister for Agriculture in the area to which they apply, and of both Houses of Parliament, must be submitted to the Minister by representatives of the producers, and must finally be ratified by a substantial majority of those producers who are affected by them.

Barnsley. H. H. Coldwell.
10th August.

[The sentence quoted from our " Current Topic " is a condensation of the fuller statement set out above. Mr. Coldwell is correct in stating that the Act provides facilities for the making of schemes, and we only meant that the Act provides the outline for such schemes.—Ed., *Sol. J.*]

Obituary.

The Hon. W. C. MacGregor.

The Hon. William Cunningham MacGregor, formerly a Judge of the Supreme Court of New Zealand, died at Bedford, on Saturday, 25th August, at the age of seventy-two. Born at Paisley in 1862, he was educated at George Watson's College School, Edinburgh, Edinburgh University, and the University of Otago. He was admitted to the New Zealand Bar in 1883, and took silk in 1914. He became Crown Prosecutor at Dunedin in 1914 and Solicitor-General for New Zealand in 1920. He was elevated to the Bench in 1923.

Mr. C. Crebbin.

Mr. Charles Crebbin, solicitor, a member of the firm of Messrs. Carter, Vincent & Co., of Bangor, died on Tuesday, 21st August. Mr. Crebbin, who was admitted a solicitor in 1907, was Clerk to the Justices of the Bangor Division of Caernarvonshire and Under-Sheriff of Anglesey.

Mr. S. E. Major.

Mr. Seymour Edward Major, solicitor, of Barrow-in-Furness, died on Friday, 24th August, at the age of fifty-seven. Mr. Major, who was admitted a solicitor in 1901, was Clerk to the Justices of the Barrow Division of Lancashire.

Mr. C. Withall.

Mr. Charles Withall, solicitor, of Bedford-row, W.C., and Luxemburg-gardens, W., died at Chiselborough, Somerset, on Thursday, 23rd August, at the age of seventy-four. Mr. Withall, who was admitted a solicitor in 1889, was senior partner in the firm of Messrs. Withall & Withall, of Bedford-row.

Mr. Horace Edward Golding, solicitor, of Cannon-street, E.C., and of Nevern-road, S.W., left £19,894, with net personalty £18,218.

To-day and Yesterday.

LEGAL CALENDAR.

27 AUGUST.—The trial of a gang of card-sharpers caused Paris considerable amusement on the 27th August, 1833. There was uproarious laughter when the President, having asked one of the accused why he ran away when the police came to search his lodging, received the answer that he hurried downstairs to seek for some witnesses. Monsieur Comte, a well-known conjuror, gave evidence as to the unfairness of the cards used and caused so much hilarity by turning the ace of diamonds into the queen of hearts that he was ordered to return to his seat. In retiring, he conjured a pack of cards into the pocket of another witness. The accused were convicted and sentenced to a year's imprisonment.

28 AUGUST.—Sir William Stanford was one of Queen Mary's judges. Appointed Queen's Serjeant shortly after her accession, he was in the following year raised to the bench of the Court of Common Pleas, and a little later knighted by King Philip. Strangely enough, he died three months before his royal mistress, on the 28th August, 1558. His advancement was no doubt partly due to the fact that he professed Mary's religion, but he was also a great and learned lawyer. One account sums up his character thus: "In a word, a fragrant fame he had that filled all round about and would not easily away."

29 AUGUST.—James Manning, who died at 44, Phillimore-gardens, Kensington, on the 29th August, 1866, at the age of eighty-five, was the last Queen's Ancient Serjeant. The dignity had been revived at his suggestion after a long interval. It entitled him *ex officio* to a seat in the House of Lords, but without the right of speaking, unless consulted, or voting. This office he held for twenty years before his death. He was also for many years judge at the Whitechapel County Court.

30 AUGUST.—Sir Robert Heath, formerly Chief Justice of the King's Bench, died in exile at Calais on the 30th August, 1649.

31 AUGUST.—On the 31st August, 1793, Thomas Muir was sentenced at Edinburgh to fourteen years' transportation, having been found guilty of sedition. Perhaps he partly owed the severity of his sentence to the fact that he had been applauded in court, which the Lord Justice Clerk said convinced him that a spirit of discontent still lurked in the minds of the people, and that it would be dangerous to allow the prisoner to remain in the country. Muir declared: "Were I to be led this moment from the Bar to the scaffold, I should feel the same calmness and serenity which I now do."

1 SEPTEMBER.—On the 1st September, 1553, Sir Henry Bradshaw was removed from the office of Lord Chief Baron of the Exchequer and David Brook succeeded him. Shortly afterwards, the day following Queen Mary's coronation, the new judge and others "were dobyd knightes of the carpet." He filled his place till Hilary Term, 1557-8. Like many successful men, he was consulted as to the best way of getting on, and it is recorded that he replied: "Never do anything by another that you can do by yourself." His judicial decisions are to be found reported in "Dyer." His second wife was a widow twice over when she married him and survived to get a fourth husband.

2 SEPTEMBER.—Three times Samuel Gray was tried at Monaghan for shooting with intent to murder and three times the jury disagreed. Then when his case came on again, he challenged two jurors peremptorily without showing any special ground. The challenges were overruled and the prisoner tried and convicted, but on the 2nd September, 1844, the House of Lords reversed the judgment, holding that in the case of all felonies, not only those punishable capitally, the prisoner could challenge twenty jurors peremptorily.

THE WEEK'S PERSONALITY.

The judicial career of Sir Robert Heath falls into two parts. He was appointed Chief Justice of the Common Pleas in 1631, and then, according to his memoirs, "at the end of three years, I was on a sudden discharged of that place of chief justice, noe cause being then nor at any time since shewed for my removal." He resumed practice at the Bar as junior Serjeant, but in 1641 he was appointed a Justice of the King's Bench. When Charles retired to York on the outbreak of the Civil War, Heath as a faithful royalist attended him there and, subsequently, followed him to Oxford, being appointed Chief Justice of the King's Bench in succession to Sir John Bramston, who had excused himself from going with his sovereign. Till 1646 he performed his judicial functions under difficulties amidst a state of war, being authorised on circuit "to forbear those places whither you conceave you may not goe with convenient safety." In 1645, the Parliament passed an ordinance disabling him from being a judge as though he were dead. He was given the option of exile or remaining to run the risk of further danger and he finally retired to France, where he survived till his death at Calais in 1649. He was a constitutional lawyer of learning and ability, a man of rare constancy to his principles, who preferred exile rather than submit to those "who had first fought their sovereign in the field and then had murdered him on the scaffold."

A SPORTING JURIST.

That notable horseman, Mr. Justice Wylie, has once again played a prominent part at the Dublin Horse Show, where several horses entered by him very honourably acquitted themselves. In such a country as Ireland, a sporting judge is in the best judicial tradition. It was Lord Chief Justice O'Brien ("Pether"), a jurist with the ambition of being accepted as a distinguished sportsman, who enshrined in the law reports a unique judgment which is the very exuberance of horse-loving enthusiasm. The action was *Barrett* v. *Irvine*, and having styled it the case of "The Enfant Gâté of Roscarberry," the judge thus summarised the plaintiff's argument: "A fond mother paid some money, the price of horses which her son, a spoilt boy, had bought and it is argued that she thereby held him out to the world as, and constituted him, her general agent to buy horses on her credit to any extent his juvenile fancy might suggest. That, in fact, if another Waterloo was to be fought in defence of the liberties of Europe, this impulsive youth might horse at her expense a brigade of the Grays, Inniskillings and 1st Royals, and add another page to the history of chivalry. If the law permits this, the man in the street . . . may well regard Mr. Bumble's famous *dictum* not merely as historical but true."

BUYING HORSES.

Later on, the sporting jurist continued: "During the argument, I put the following case to counsel. Take, I said, the instance of a father who has a daughter who hunts, who is fond of horses and knows something about them—she buys some three or four horses, buying them during an interval of some three or four years, and the father pays for the horses and keeps them at his expense for the daughter. Does that fact, the fact of the payment of the price of the horses by the father and the keep of them by him, supply any evidence that the father held out the daughter, constituted the daughter as his general agent to buy as many horses as she pleased—to buy, for instance, all the horses at the Dublin Horse Show? This, in my opinion, would be the very extravagance of absurdity . . ." Further on he shrewdly observed: "No doubt a fond mother paid for a pink coat for her sporting son, and no doubt paid also for a horse to carry him in the hunting field—£25 was, I believe, the price. I hope this horse was not what is sometimes called 'a clever cripple.' In these country places good bargains are not infrequently picked up." In earlier days O'Brien had himself been defendant in an action arising out of the misdeeds of a pack of hounds or rather a collection of dogs kept in the village of Kilfenora, when he called himself Master of the Hounds.

Notes of Cases.

Court of Appeal.

Phillips *v.* Copping.

Scrutton, Greer and Maugham, L.JJ.
26th, 27th and 28th June, 1934.

Landlord and Tenant—Rent Restrictions—Standard Rent—Letting at Lower Rent—Right to Increase—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17)—Rent Restrictions (Notices of Increase) Act, 1923 (13 & 14 Geo. 5, c. 13).

Appeal from the King's Bench Division.

Before August, 1914, premises had been let at £65 a year, which was the standard rent within the Rent Restrictions Acts. For three years after August, 1914, C was tenant at a rent of £47 10s. a year, with an option to renew his tenancy at £55 a year. On the 13th July, 1922, the landlord served on the tenant notice of an increase of rent to £91 a year. The first quarterly payment made thereafter was £22 15s., based on the increased rent, but thereafter arrears began, and in March, 1925, £68 was owing. Mrs. C then assumed liability and agreed to pay the increased rent. C having gone bankrupt his trustee disclaimed the tenancy. Mrs. C continued to pay the rent for some time, but subsequently fell into arrears. The landlord brought an action to recover £278 15s., and the tenant counter-claimed for alleged over-payments of rent. The Divisional Court, affirming the Official Referee, held that there was no effective notice of increase of rent, and that the tenant, having consequently for some years overpaid the standard rent, should recover £93.

Scrutton, L.J., allowing the appeal, said that he could not agree that service of the notice had not been proved. It had been argued that a landlord who since August, 1914, had let the premises at a rent lower than the standard rent, could not raise the agreed rent to the standard rent. The Rent Restrictions Acts contained no such prohibition. The conclusion to which his lordship came was the same which he had expressed *obiter* in *Glossop* v. *Ashley* [1922] 1 K.B. 1. *Dufty* v. *Palmer* [1924] 2 K.B. 35, cited in support of the proposition contended for, was wrongly decided. On another ground the judgment on the counter-claim for over-payments of rent could not stand, because under the Acts only such over-payments as were made within six months before the date of the writ were recoverable, and here there were none. The Official Referee should have taken this point though it was not raised.

Counsel: *Derbyshire*, K.C., and *Fortune; Thorp*, K.C., and *A. G. Gordon*.

Solicitors: *Payne & Co.; Thorp, Saunders & Thorp.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Weight (Inspector of Taxes) *v.* Salmon.

Lord Hanworth, M.R., Slesser and Romer, L.JJ.
5th July, 1934.

Revenue—Company—Managing Director—"Special Services"—Allotment of Shares at Par—Market Value above Par—Income Tax—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Sched. E, r. 1.

Appeal from a decision of Finlay, J.

The managing director of a company was entitled to a yearly salary. During a number of years the company, by resolution, gave him the right to apply for and take up at par a certain number of its "A" ordinary shares, which were considerably above par. This privilege was given because of his "eminent and special services" as managing director. He took up the shares but did not sell any of them. Assessments were made on him in respect of the premium value of the shares, and Finlay, J., held that the privilege was given in respect of services rendered in "exercising an office or employment of profit" within Sched. E., r. 1 of the Income Tax Act, 1918, and that, consequently, their value was assessable.

Lord Hanworth, M.R., dismissing the appeal, said that besides Lord Watson's observations in *Tennant* v. *Smith* [1892] A.C. 150, the cases of *Attorney-General* v. *Ashton Gas Co.* [1904] 2 Ch. 621, and *Samuel* v. *Commissioners of Inland Revenue* [1918] 2 K.B. 553, must be borne in mind. Though there was no immediate profit at the time the privilege of applying for the shares was given, by any ordinary test, the director had enjoyed a profit arising from these constant and successive allotments of shares.

Slesser and Romer, L.JJ., agreed.

Counsel: *Latter*, K.C., *Greene*, K.C., and *Andrewes-Uthwatt; The Attorney-General* (Sir Thomas Inskip, K.C.) and *R. Hills*.

Solicitors: *Bartlett & Gluckstein; Solicitor of Inland Revenue.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Alexandrovna (Princess) *v.* Metro-Goldwyn-Mayer Pictures Limited.

Scrutton, Greer and Slesser, L.JJ.
12th, 13th and 17th July, 1934.

Libel and Slander—Talking Film—Imputation that a Woman has been Ravished—Whether Imputation of Unchastity—Damages.

Appeal from a decision of Avory, J.

The defendants produced and caused to be exhibited a talking film entitled "Rasputin, the Mad Monk," including pictures and words which the plaintiff alleged were understood to mean that she had been seduced by Rasputin. The jury awarded her £25,000 damages, and Avory, J., entered judgment for that amount.

Scrutton, L.J., dismissing the appeal, said that there was evidence on which the jury could come to the conclusion that reasonable people would take "Princess Natasha" in the film for the plaintiff. It had been argued that the film containing spoken words was a slander and not a libel, that no special damage had been proved, and that the plaintiff's case did not come within the exception which provided that a slander imputing unchastity to a woman was actionable, without proof of special damage, inasmuch as to say of a woman that she had been ravished was not to impute unchastity to her. This argument must fail. Moreover, the damages awarded were not excessive, having regard to the high position of the plaintiff and the publicity involved in the film's exhibition.

Greer and Slesser, L.JJ., agreed.

Counsel: *Sir William Jowitt*, K.C., *Wallington*, K.C., *Idelson* and *S. Gates; Sir Patrick Hastings*, K.C., and *H. St. John Field.*

Solicitors: *H. S. Wright & Webb; J. D. Langton and Passmore.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

In re Paulin, deceased; *In re* Crossman, deceased.

Lord Hanworth, M.R., Slesser and Romer, L.JJ.
4th, 5th and 27th July, 1934.

Revenue—Estate Duty—Valuation of Brewery Shares—Price Limitation by Articles of Company—Open Market Value—Finance Act, 1894 (57 & 58 Vict., c. 30), s. 7 (5).

Appeal from a decision of Finlay, J. (78 Sol. J. 82).

The deceased at their death owned ordinary shares in Mann, Crossman & Paulin Limited. Under the company's articles, these could be transferred by will to certain relatives, subject to the directors' approval. Shares not so disposed of might, within three months, be transferred by the company to another member, at a price to be fixed by provisions in the

articles. If within three months the company could not find a member willing to purchase, the holder might sell to any person at any price within three months. Finlay, J., held that, for the purposes of estate duty, the value was to be fixed, not at the price existing members would pay, purchasing under the articles, but at the price the shares would fetch in the open market on the terms that the purchaser would hold them subject to the articles of association; trust companies were not to be regarded as possible bidders, as the company would not have registered them as shareholders.

Lord HANWORTH, M.R., delivered a dissenting judgment.

SLESSER, L.J., allowing the appeal, said s. 7 (5) of the Finance Act, 1894, made no provision for valuing such shares as these, the true nature of a share being that expressed by Farwell, J., in *Borland's Trustee* v. *Steel Bros. & Co.* [1901] 1 Ch. 279, at p. 288. Finlay, J., had adopted the view of the Court of Appeal in Ireland in *Attorney-General of Ireland* v. *Jameson* [1904] 2 I.R. 644; [1905] 2 I.R. 218, followed in *Smyth* v. *Revenue Commissioners* [1931] I.R. 643, and *Salvesen's Trustees* v. *Inland Revenue* [1930] Sc. L.T. 387. However, in fixing the value in the "open market," regard must be had to the nature of the property which the supposed purchaser would acquire and whether it had necessarily qualities which confined its value. With this in mind, a value ascertained by reference to the "open market" showed an intention to include every possible purchaser (see *Inland Revenue Commissioners* v. *Clay* [1914] 3 K.B. 460, at p. 475). The hypothetical sale did not require violence to be done to the nature of its subject-matter. The value to be set on the shares was that fixed in accordance with the company's articles.

ROMER, L.J., agreed.

COUNSEL: *Greene*, K.C., and *David Jenkins*; *The Attorney-General* (Sir Thomas Inskip, K.C.), *The Solicitor-General* (Sir Donald Somervell, K.C.) and *J. Stamp*.

SOLICITORS: *Crossman, Block & Co.*; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Davy *v.* Attorney-General.

Langton, J. 13th July, 1934.

LEGITIMACY PETITION — EVIDENCE — ADMISSIBILITY OF HEARSAY—DECLARATIONS *ante litem motam*—COMMENCEMENT AND INTERPRETATION OF *lis*—PARTIAL APPLICATION OF RULE IN PEDIGREE CASES—COSTS—LEGITIMACY ACT, 1926 (16 & 17 Geo. 5, c. 60).

This was a petition for a declaration of legitimacy brought by Arthur (or Robert) Henry Davy, a commercial traveller, claiming that he was the son of the late Edward Chatham, a solicitor of Bredbury, Lancashire, and of Mary Chatham, formerly Davy, and that his parents were lawfully married in the year 1884, and that by such marriage the petitioner became legitimated under the Legitimacy Act, 1926, as from 1st January, 1927. The petitioner was born on 16th July, 1879, at the workhouse at Tanshelf, Pontefract. Edward Chatham died on 7th January, 1929, intestate, leaving estate of the value of £15,000 approximately. Administration was granted out of the Manchester District Registry on 7th May, 1929, to Edward Alfred Chatham as the lawful son of the intestate. Edward Alfred Chatham died on 16th March, 1930, leaving a will appointing executors. The Attorney-General, as respondent, put the petitioner to proof of his claim. The executors of Edward Alfred Chatham, as second respondents, denied that the petitioner was the natural son of Mary Davy, afterwards Mrs. Edward Chatham, and alleged that his natural father was a person unknown, and prayed that the petition be dismissed. The case raised important questions as to the admissibility of hearsay evidence on the hearing of legitimacy petitions.

LANGTON, J., in the course of delivering a considered judgment, said that the petition had been opposed and strenuously contested by the executors and trustees of the will of Edward Alfred Chapman, and the Attorney-General had insisted firmly on strict proof of each step in the chain of evidence. The burden of proof that Edward Chatham was his father lay on the petitioner. The general evidence, apart from documents of record, such as certificates of birth, baptism and marriage, consisted to a large extent of statements said to have been made by persons now dead. It fell to be considered how far such evidence was admissible in a case brought under the Legitimacy Act, 1926. As to matters which were truly hearsay, could the well-known rules concerning pedigree cases properly be applied to an investigation under that Act? The guiding rule in pedigree cases was well summed up in "Phipson on Evidence," 7th ed., p. 297: "Declarations by deceased relatives made *ante litem motam* are admissible to prove matters of family pedigree," on the ground stated by Lord Blackburn in *Sturla* v. *Freccia*, 5 A.C. 623, at p. 641, "that they were matters relating to a long time past and it was really necessary to relax the strict rules of evidence for the purpose of doing justice." That exception was now well grafted on the law of evidence, and to his (Mr. Justice Langton's) mind the same conditions and the same urgency applied to matters of legitimacy as to questions of pedigree. Consequently, on the broad issue whether cases under the Legitimacy Act, 1926, were to be classed as pedigree cases in the matter of admissibility of hearsay evidence, he was of opinion that the same exception should be allowed. In the public interest the Attorney-General had raised two far-reaching objections. The first was that, even supposing that cases under the Legitimacy Act could be put in the same category as pedigree cases for the purpose of admitting hearsay evidence, no declarations from deceased members of the Davy or Chatham families could be received in evidence because the claimant was *ex concessis*, illegitimate at birth and had no relatives, being *filius nullius*. If that were in truth a valid objection, in a very large number of cases of that class the court would be obliged to take away with one hand, by a rule of evidence, much of what the legislature by a statute had attempted to confer with the other hand on persons of illegitimate birth. His lordship, after examining the authorities and referring to *Doe d. Bamford* v. *Barton* (1837), 2 M. & Rob. 28; *Doe d. Jenkins* v. *Davies*, 10 Q.B. 314; *Murray* v. *Milner*, 12 Ch. D. 845; and *In re Perton*; *Pearson* v. *Attorney-General* (1885), 53 L.T. 707, said that he could not believe that a technical line of reasoning, resting on a somewhat slender basis of authority, ought to be allowed to limit and possibly defeat the efforts of claimants who were endeavouring to obtain the advantages of the Legitimacy Act. The second objection arose on the construction of the phrase *ante litem motam*, in view of the principle that declarations especially received in pedigree cases must have been made before the *lis* in the case arose. By far the most important part of the respondents' case rested on an alleged declaration by Edward Chatham in 1918 which amounted to a complete denial of paternity and a clear statement that the petitioner was his wife's child born before he met her. The petitioner contended strongly that that declaration was *post litem motam*. It had been suggested by counsel for the Attorney-General that there could be no *lis* before the date of the Legitimacy Act, as the question was not capable of being litigated before its passage. His lordship here referred to *Butler* v. *Mountgarret*, 7 H.L.C. 633, at p. 641, and to *Shedden* v. *Patrick* (1854), 1 Macq. H.L. 535, and said that he accepted the view expressed therein that the essential point to determine was whether a controversy had arisen which might bias the minds of declarants. There was therefore neither reason nor authority for limiting the meaning of the word *lis* in the way contended for on behalf of the Attorney-General. After reviewing the evidence and dealing in detail

with the incident in 1918 referred to above, his lordship stated that he found the facts of the petition proved. There would be a declaration in the petitioner's favour. No order was made for costs as between the petitioner and the respondent executors, but the petitioner after argument was ordered to pay the costs of the Attorney-General.

COUNSEL: *Preston*, K.C., and *Tyndale*, for the petitioner; *Wilfrid Lewis* and *George Bankes*, for the Attorney-General; *R. H. Bayford*, for the respondent executors.

SOLICITORS: *Stow, Preston & Lyttelton*, for *William Hough*, Runcorn; *The Treasury Solicitor; Mawby & Barrie* for *Tom Dixon*, Manchester.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

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Rules and Orders.

THE COUNTY COURTS (AMENDMENT) ACT, 1934 (DATE OF COMMENCEMENT) ORDER, 1934.

At the Court at Buckingham Palace, the 14th day of August, 1934.

Present,

The King's Most Excellent Majesty in Council.

Whereas by subsection (4) of section 35 of the County Courts (Amendment) Act, 1934,* (hereinafter called "the Act") it is enacted that the provisions of the Act shall come into operation on such date as His Majesty in Council may appoint, and that different days may be appointed for different purposes and different provisions of the Act.

Now, therefore, His Majesty, in pursuance of the powers conferred upon Him, is pleased by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. The provisions of the Act specified in the Schedule to this Order shall come into operation for all purposes on the first day of January, One thousand nine hundred and thirty-five.

2. This Order may be cited as the County Courts (Amendment) Act, 1934, (Date of Commencement) Order, 1934.

E. C. E. Leadbitter.

*24-5 G. 5. c. 17.

SCHEDULE.

Provision.	Subject-matter.
Section seventeen	Amendment as to trial by jury.
Section eighteen	Summoning of jurors.
Section nineteen	Power of registrar to try cases by consent.
Section twenty	Extension of judge's power to refer.
Section twenty-one and the Third Schedule.	Rules as to funds in court.
Section twenty-two	Liability of Consolidated Fund for funds in court and provision as to dormant funds.
Section twenty-three	Accounts of registrar and duties as to fees, &c. collected by him.
Section twenty-five	Miscellaneous provisions as to solicitors.
Section twenty-six	Payment of money payable under judgment or order of court.
Section thirty-one	Penalty for representing document to have been issued from county court.

Legal Notes and News.

Honours and Appointments.

His Honour Judge BEAZLEY, County Court Judge for Hull and district (Circuit 16) since 1927, has been appointed Judge of Barnet, Edmonton, Gray's Thurrock, Hertford, Ilford, Southend, Watford and Wood Green County Courts (Circuit 38).

Mr. HAROLD BROOKE ASHFORD, solicitor, Deputy Town Clerk of Bolton, has been appointed Town Clerk and Clerk of the Peace in succession to the late Mr. Samuel Parker. Mr. Ashford was admitted a solicitor in 1907.

Mr. WILLIAM H. HADFIELD, solicitor, Clerk to the Justices of the Stockport Division of the County of Chester, has been appointed Clerk to the Justices of the Farnham Division of Surrey, and Mr. T. R. ELLIS, solicitor, has been appointed Clerk to the Justices of the Stockport Division in succession to Mr. Hadfield. Mr. Hadfield was admitted a solicitor in 1907, and Mr. Ellis was admitted in 1927.

Wills and Bequests.

Mr. Alfred John Dunning, solicitor, of Honiton, left £19,718, with net personalty £14,600.

Mr. Henry Anthony Hare, solicitor, of Much Hadham, Herts, left £19,310, with net personalty £11,890.

Mr. Arthur Sandford, solicitor, of Sevenoaks, left £18,614, with net personalty £17,043.

Mr. Samuel Parker, of Bolton, solicitor, Town Clerk of Bolton since 1905, left £11,220, with net personalty £10,633.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

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Long Vacation, 1934.

HIGH COURT OF JUSTICE.

NOTICE.

During the remainder of the Vacation, all applications "which may require to be immediately or promptly heard," are to be made to The Right Hon. The PRESIDENT of the Probate, Divorce and Admiralty Division.

COURT BUSINESS.—The Right Hon. The PRESIDENT will, until further notice, sit in The Probate, Divorce and Admiralty Court II, Royal Courts of Justice, at half-past 10 on Wednesday in each week for the purpose of hearing such applications of the above nature, as according to the practice in the Chancery Division are usually heard in Court.

PAPERS FOR USE IN COURT.—CHANCERY DIVISION.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrar's Office, Room 136, Royal Courts of Justice, on or before 1 o'clock two days previous to the day on which the application to the Judge is intended to be made :—

1.—Counsel's certificate of urgency or note of special leave granted by the Judge.

2.—Two copies of notice of motion, one bearing a 5s. impressed stamp.

3.—Two copies of writ and two copies of pleadings (if any).

4.—Office copy affidavits in support, and also affidavits in answer (if any).

No Case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the Case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows :—"Chancery Official Letter : To the Registrar in Vacation, Chancery Registrar's Office, Royal Courts of Justice, London, W.C.2."

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The Chancery Chambers, will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Right Hon. The PRESIDENT will sit for the disposal of King's Bench Business in Judges' Chambers at half-past 10 in each week.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.15 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 5th and 19th September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on each Wednesday during the Vacation, except Wednesday the 1st August.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m. except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

COMMISSION ON TITHE.

The membership of the Royal Commission on Tithe Rent Charge has now been completed. The members are as follows :—

Sir John Fischer Williams, C.B.E., K.C. (chairman).
Sir Leonard James Coates.
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Sir Edward Robert Peacock, G.C.V.O., D.C.L.

Mr. E. Lawrence Mitchell, C.B.E., Assistant Secretary, Ministry of Agriculture and Fisheries, will act as Secretary to the Commission, and Mr. A. S. Allen, also of the Ministry, as Assistant Secretary.

All communications relating to the Royal Commission should, for the time being, be addressed to the Secretary of the Royal Commission on Tithe Rent Charge, 7, Whitehall Place, London, S.W.1.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 13th September, 1934.

	Div. Months.	Middle Price 29 Aug. 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	112¾	3 10 11	3 3 8
Consols 2½%	JAJO	80⅜	3 1 11	—
War Loan 3½% 1952 or after	JD	104½	3 7 0	3 3 4
Funding 4% Loan 1960-90	MN	116	3 9 0	3 1 10
Funding 3% Loan 1959-69	AO	99¼	3 0 5	3 0 9
Victory 4% Loan Av. life 29 years	MS	112⅝xd	3 11 0	3 6 4
Conversion 5% Loan 1944-64	MN	119⅜	4 3 9	2 11 3
Conversion 4½% Loan 1940-44	JJ	111	4 1 1	2 10 0
Conversion 3½% Loan 1961 or after	AO	103½xd	3 7 8	3 6 1
Conversion 3% Loan 1948-53	MS	101½	2 19 1	2 17 3
Conversion 2½% Loan 1944-49	AO	97⅛xd	2 11 6	2 14 9
Local Loans 3% Stock 1912 or after	JAJO	93	3 4 6	—
Bank Stock	AO	370½	3 4 9	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	84½	3 5 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	91½	3 5 7	—
India 4½% 1950-55	MN	112½	4 0 0	3 9 5
India 3½% 1931 or after	JAJO	93½	3 14 10	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	116	3 17 7	3 11 4
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	3 3 10
Tanganyika 4% Guaranteed 1951-71	FA	111	3 12 1	3 2 4
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102½	2 18 6	2 15 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 19 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 13 2
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	100	3 15 0	3 15 0
Canada 4% 1953-58	MS	107	3 14 9	3 9 10
Natal 3% 1929-49	JJ	98	3 1 3	3 3 5
New South Wales 3½% 1930-50	JJ	97	3 12 2	3 15 0
New Zealand 3% 1945	AO	99	3 0 7	3 2 3
Nigeria 4% 1963	AO	109	3 13 5	3 10 0
Queensland 3½% 1950-70	JJ	98	3 11 5	3 12 0
South Africa 3½% 1953-73	JD	104	3 7 4	3 4 3
Victoria 3½% 1929-49	AO	99	3 10 8	3 11 10
W. Australia 3½% 1935-55	AO	98	3 11 5	3 12 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	92	3 5 3	—
Croydon 3% 1940-60	AO	98½	3 0 11	3 1 8
Essex County 3½% 1952-72	JD	104	3 7 4	3 4 1
*Hull 3½% 1925-55	FA	101	3 9 4	—
Leeds 3% 1927 or after	JJ	91	3 5 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103	3 8 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	78½	3 3 8	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	91½	3 5 7	—
Manchester 3% 1941 or after	FA	91	3 5 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	97	2 11 7	2 15 0
Metropolitan Water Board 3% "A" 1963-2003	AO	93½	3 4 2	3 4 9
Do. do. 3% "B" 1934-2003	MS	94	3 3 10	3 4 5
Do. do. 3% "E" 1953-73	JJ	98	3 1 3	3 1 10
Middlesex County Council 4% 1952-72	MN	111	3 12 1	3 3 8
‡ Do. do. 4½% 1950-70	MN	115	3 18 3	3 5 7
Nottingham 3% Irredeemable	MN	91	3 5 11	—
Sheffield Corp. 3½% 1968	JJ	104	3 7 4	3 6 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	109⅓	3 13 1	—
Gt. Western Rly. 4½% Debenture	JJ	118½	3 15 11	—
Gt. Western Rly. 5% Debenture	JJ	130	3 16 11	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	124½	4 0 4	—
Gt. Western Rly. 5% Preference	MA	112	4 9 3	—
Southern Rly. 4% Debenture	JJ	107½	3 14 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108¼	3 13 9	3 10 5
Southern Rly. 5% Guaranteed	MA	124½	4 0 4	—
Southern Rly. 5% Preference	MA	112	4 9 3	—

*Not available to Trustees over par. ‡Not available to Trustees over 115.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date ; in the case of other Stocks, as at the latest date.

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Printed in Great Britain by THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., at "Oyez" House, Fetter-lane, London, E.C.4, and Published at 29, Breams-buildings, E.C.4 ('Phone Holborn 1853). Agents—The United States and Canada: The Carswell Co., Ltd., 145-149, Adelaide-street West, Toronto 2, Canada; India: Higginbothams, Publishers, Mount-road, Madras; Australia and New Zealand: "The Times," 255A, George-street, Sydney, N.S.W. Saturday, 1st September, 1934.